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February 3, 2004

Ms. Marlene Dortch, Secretary Federal Communications Commission The Portals, TW-A325 445 12th Street, SW Washington, D.C. 20554

Re: Ex Parte Presentation – Review of the Section 251 Unbundling Obligations of

Incumbent Local Exchange Carriers; CC Docket Nos. 01-338, 96-98, 98-147

Dear Ms. Dortch:

On February 2, 2004, Dave Baker, Vice President, Law and Policy for EarthLink, Inc. and Mark O'Connor of Lampert & O'Connor, P.C. met with Commissioner Adelstein and his senior legal advisor, Ms. Lisa Zaina, to discuss the above referenced proceedings. During the meeting, EarthLink discussed the issues raised in its October 2nd Petition for Reconsideration of the line sharing portion of the FCC's Report and Order and Order on Remand released August 21, 2003 ("*R&O*") and previously filed positions in the above-referenced dockets.

EarthLink discussed the recent oral argument before the D.C. Circuit, including the judges' skepticism of the FCC's state delegation, UNE-P decisions in the *R&O*, and the lack of discussion on line sharing. EarthLink outlined several issues that it believes compel the Commission to reconsider its decision. EarthLink urged that the Commission resolve the line sharing reconsideration before the D.C. Circuit rules on the pending judicial appeal of the *R&O*, and that, especially given the likely remand of the UNE-P issues, the Commission should not have limited data CLEC competition to just that portion of the market served by line splitting and UNE-P. Further, EarthLink stated its belief that, with Commissioner Adelstein's support, a majority of the Commission would support reinstatement of the line sharing UNE, which would advance ISP choice and intramodal broadband competition in furtherance of Section 706 of the 1996 Act.

Pursuant to the Commission's rules, one copy of this letter/memorandum is being filed electronically in each of the above-referenced dockets for inclusion in the public record. Please do not hesitate to call me if you have any questions.

Respectfully submitted,

/s/ Mark J. O'Connor Counsel for EarthLink, Inc.